

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ISAAC LEGARETTA,)
and JOHN or JANE DOES 1-20,)
Plaintiffs,)
vs.)
FERNANDO MACIAS, Dona Ana County)
Manager, DIRECTOR BRYAN BAKER, an)
Official with the Dona Ana County Detention)
Center, CAPTAIN BEN MENDOZA, an official)
with the Dona Ana County Detention Center,)
CAPTAIN JOSHUA FLEMING, an official with)
the Dona Ana County Detention Center, and JOHN)
or JANE DOES 1-20,)
Defendants.)
Case No.: _____
APPLICATION FOR TEMPORAR
RESTRANING ORDER AND
PRELIMINARY INJUNCTION

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Fed. Rules Civ. Proc. 65, Plaintiff respectfully requests that the Court enter an immediate temporary restraining order and set a hearing for a preliminary injunction prohibiting Defendants from:

1. Terminating or disciplining Plaintiff for not accepting a COVID vaccine;
2. Taking any action to enforce the unlawful mandate including continuing to intimidate, demand, sanction or coerce plaintiff into submitting to the unapproved and experimental COVID vaccine.

As grounds for this Application, Plaintiff states that the facts set forth below establish that: 1) there is a substantial likelihood Plaintiff will prevail on the merits of his claims; 2)

Plaintiff will suffer irreparable injury unless a TRO and preliminary injunction are granted; he can be harmed in either the potential physical harm from the unapproved experimental product itself; or harmed by the loss of his employment for not following an illegal directive; 3) the balance of equities tips in Plaintiff's favor; and 4) issuance of a TRO and preliminary injunction is in the public interest.

Plaintiff's Verified Complaint for Violation of Federal Law and Request for Declaratory Judgment and Preliminary and Permanent Injunctive Relief filed herein on February 26, 2021, (hereafter "Verified Complaint"), provides detailed and verified factual allegations that support Plaintiff's claims. Plaintiff incorporates by reference, as if fully set forth herein, the facts alleged in his Verified Complaint.

The Verified Complaint asserts both facial and as applied federal question challenges to the Directive issued by the County Manager of Dona Ana County that various categories of county employees are required to obtain a COVID vaccine or face consequences up to losing their employment.

Specifically, the Verified Complaint challenges the directive as being illegal in that the FDA statutes concerning products granted Emergency Use Authorization, not *approval*, cannot be made mandatory. Federal law concerning this requirement pre-empts state law and does not allow for public or private employers to enact provisions in conflict with the federal laws. The County directive therefore, violates Plaintiff's rights to both substantive and procedural due process, and right to bodily integrity under the 14th Amendment and 4th Amendment of the U.S. Constitution.

APPLICABLE FACTS

1. The COVID vaccine being used by the County was produced by Pfizer and obtained Emergency Use Authorization (not approval) by FDA in December, 2020. Emergency Use Authorization (EUA) is governed by 21 U.S.C. §360bbb-3 which requires that any recipient give informed consent. No one can force any person to take a product given this type of marketing authorization.
2. On January 29, 2021 County Manager Macias issued a mandatory COVID-19 vaccine directive by email to Plaintiff and other employees designated as “First Responders”. Plaintiff, as a corrections officer employed by the Dona Ana County Detention Center, is one such “first responder”.
3. Plaintiff does not assert any “qualifying conditions” that would allow him to be exempt under the mandate.
4. On February 8, 2021, Attorney Garner (counsel herein) transmitted a Notice to Cease & Desist the mandate as being unlawful in light of the Emergency Use Authorization granted by FDA for the COVID vaccine, and that it requires informing the potential recipient of the right to refuse or accept.
5. On February 17, 2021 Plaintiff was subjected to a “Coaching/Counseling Acknowledgement” for the purpose of “bringing (his) work performance in line with Dona Ana County Detention Center standards and expectations” meaning putting further duress and pressure on Plaintiff to comply with an illegal mandate. Exhibit B to complaint.

6. On February 19, 2021 Attorney Garner sent a Notice of Impending Legal Action to County Manager Macias and other county officials. Neither letter received a response except for a terse email from the County Attorney letting Attorney Garner know the county commissioner and manager were represented by counsel and all further communication needed to go through him.
7. Within 24 hours of filing, County Attorney's office will be given notice of the filing of the complaint and this Application for Temporary Restraining Order by email to: Nelson Goodin, Dona Ana County Attorney, nelson@donaanacounty.org
8. Plaintiff continues to refuse the unapproved product at the risk of being terminated from his job as an Officer of the Dona Ana County Detention Center.
9. All facts set forth in the Complaint are incorporated herein.

WHEREFORE, due to the threat of irreparable harm and immediacy, Plaintiff requests an immediate ex parte temporary restraining order, without bond; and requests this Court schedule a preliminary injunctive relief within the time prescribed by the Rules along with a trial on the declaratory judgment relief and permanent injunction.

Respectfully submitted,

/s/ N. Ana Garner
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